No. 92-843

In the Supreme Court of the United States

OCTOBER TERM, 1992

SAVE OUR CUMBERLAND MOUNTAINS, INC., PETITIONER

v.

BRUCE BABBITT, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Section 520(c)(1) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1270(c)(1), provides that "[a]ny action respecting a violation of [SMCRA] or the regulations thereunder may be brought only in the judicial district in which the surface coal mining operation complained of is located." The question presented is:

Whether the court of appeals properly concluded that Section 520(c)(1) precludes a citizen suit brought under SMCRA in the United States District Court for the District of Columbia, a judicial district in which no surface coal mining operation is located.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 963 F.2d 1541. The opinion of the district court (Pet. App. 23a-32a) is not officially reported, but is reprinted at 21 Envtl. L. Rep. (Envtl. L. Inst.) 20,121. A previous opinion of the court of appeals (Pet. App. 46a-53a) is reported at 725 F.2d 1434. A previous opinion of the district court (Pet. App. 33a-41a) is reported at 550 F. Supp. 979.

JURISDICTION

The judgment of the court of appeals was entered on May 22, 1992. A petition for rehearing was denied

on August 18, 1992. The petition for a writ of certiorari was filed on November 16, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This action arises under the "citizen suit" provision of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1270, which establishes two categories of civil actions. Section 520(a)(1) authorizes actions against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to [SMCRA]." 30 U.S.C. 1270(a)(1). Section 520(a)(2) authorizes citizen suits against the Secretary for the failure "to perform any act or duty under [the Act] which is not discretionary with the Secretary." 30 U.S.C. 1270(a)(2). As to the proper forum for citizen suits, Section 520(c)(1) states that "[a]ny action respecting a violation of this chapter or the regulations thereunder may be brought only in the judicial district in which the surface coal mining operation complained of is located." 30 U.S.C. 1270(c)(1). The words "this chapter" refer to the entire Act. Pet. App. 14a; see Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, § 520(c)(1), 91 Stat. 504.

1. Petitioner filed this action pursuant to Section 520(a)(2) in 1981, seeking to enjoin the Secretary of the Interior and the Director of the Office of Surface Mining Reclamation and Enforcement (the federal respondents) from failing to enforce SMCRA. Petitioner alleged that the federal respondents had violated mandatory duties under SMCRA to collect civil penalties and take alternative enforcement measures against some 700 coal operators that were, according

to petitioner, in violation of SMCRA. Petitioner filed suit in the United States District Court for the District of Columbia, a judicial district in which no surface coal mining operations are located. Pet. App. 33a-35a. The federal respondents moved to dismiss the action on the ground that Section 520(c)(1) is a jurisdictional limitation that allows suits only in those judicial districts where the relevant mining operations are located. The district court denied the motion, holding that Section 520(c)(1) "is a venue, not a jurisdictional provision," and that it allows plaintiffs "to choose their forum." Pet. App. 34a, 35a.

2. A panel of the court of appeals reversed, holding that "all actions against the Secretary for failure to perform duties required by [SMCRA] are governed by the specific venue provision in section 520(c)(1) of the Act," which requires that "any claim alleging a violation of the Act or its regulations must be brought in the district where the mine operation complained of is located." Pet. App. 50a. The court concluded that because "none of [the complained-of] mines is located in the District of Columbia, venue is improper in this district." *Id.* at 52a. The full court then voted to rehear the case, and it vacated the panel's judgment and opinion pending rehearing en banc. The parties reached a settlement prior to argument before the en banc court; pursuant to the parties' request, the court of appeals remanded the case to the district court for settlement proceedings. See *id.* at 8a.[1]

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[1] A different judge had granted the Secretary's motion to dismiss another lawsuit brought by petitioner on the ground that, under Section 520(c)(1), the case was improperly brought in the District of Columbia. *Save Our Cumberland Mountains, Inc.* v. *Watt*, 558 F. Supp. 22 (D.D.C. 1982). A

3. On remand, the district court entered a consent order implementing the parties' agreement in this case. *Save Our Cumberland Mountains, Inc.* v. *Clark*, 22 Env't Rep. Cas. (BNA) 1217 (D.D.C. 1985). That order was to expire by its terms on January 31, 1990. In 1989, the parties negotiated a new settlement and presented it to the district court. The National Coal Association and the American Mining Congress (the private respondents) moved to intervene to oppose court approval of the settlement. The district court granted the private respondents limited intervention, but ultimately approved the settlement. Pet. App. 23a-32a.

4. On the appeal taken by the private respondents, the court of appeals reversed, holding that Section 520(c)(1) "precludes locating a citizen suit in a district where no mining operations occur." Pet. App. 10a. The court concluded that petitioner must file "situation-specific litigation" in the judicial district "in which questioned mining activity is located," and that petitioner may not bring a "far-reaching" action for nationwide review in the District of Columbia, where no mining is found. *Id.* at 20a-21a. The court accordingly vacated the district court's order approving the settlement and remanded for dismissal without prejudice to further proceedings elsewhere. *Id.* at 22a.

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panel of the court of appeals affirmed that dismissal in a decision issued at the same time as the first opinion in this case. *Save Our Cumberland Mountains, Inc.* v. *Clark*, 725 F.2d 1422 (D.C. Cir. 1984). That opinion and judgment were also vacated by the en banc court, see Pet. App. 8a, and the case was settled separately, *Save Our Cumberland Mountains, Inc.* v. *Hodel*, 622 F. Supp. 1160 (D.D.C. 1985). That case is not at issue here.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is therefore not warranted.

1. SMCRA's citizen suit provision is precise and clear. It requires that "[a]ny action" respecting SMCRA violations be brought "only" in the judicial district "in which the surface coal mining operation complained of is located." 30 U.S.C. 1270(c)(1). Reading this plain language, the court properly "f[ou]nd most sensible a literal reading of SMCRA § 520 that locates '[a]ny' citizen suit in a place where offending [mine] operations are ongoing." Pet. App. 16a. Moreover, by directing that citizen suits be filed "only" as specified, the provision "is directive, not permissive," and must be "equated with a limitation of subject matter jurisdiction." *Id.* at 18a-19a (quoting *New Mexico ex rel. Energy & Minerals Dep't, Mining & Minerals Div.* v. *U.S. Dep't of the Interior*, 820 F.2d 441, 446 (D.C. Cir. 1987)). Because no surface coal mines, much less the ones about which petitioner had complained, are located in the District of Columbia, this suit was brought in the wrong court and the court of appeals properly ordered it dismissed. "[W]here, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.' " *United States* v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti* v. *United States*, 242 U.S. 470, 485 (1917)).

In its limited discussion of SMCRA's actual language (Pet. 7 & n.5), petitioner argues that because Section 520(c)(1) refers to any action respecting "a violation" of the Act, and because Section 520(a)(1)

uses the term "violation" while Section 520(a)(2) does not, the forum requirement applies solely to Section 520(a)(1) actions. Had Congress desired such a result, it could easily have said so. As the court of appeals correctly held, however, a statute "is violated when one transgresses its terms," and when the Secretary fails to perform a duty required by SMCRA, "he has 'violated' the Act." Pet. App. 15a. Petitioner's complaint, which asserts jurisdiction under Section 520(a)(2), repeatedly alleges that the Secretary has "violated" and is in "violation" of SMCRA and its regulations. See Pet. App. 16a. Moreover, Section 520(b)(2) specifically uses the term "violation" in referring to notice requirements for Section 520 (a)(2) actions. See Pet. App. 56a. The court of appeals therefore correctly held that the forum rule prescribed by Section 520(c)(1) applies to this action.

This plain reading of the citizen-suit provision comports with the overall structure of the Act as well. The sole instance in which SMCRA provides for litigation in the District of Columbia is under Section 526(a)(1), 30 U.S.C. 1276(a)(1), which provides that any action by the Secretary "promulgating national rules or regulations" shall be subject to judicial review in the United States District Court for the District of Columbia. See Pet. App. 17a; *Virginia ex rel. Virginia Dep't of Conservation & Economic Dev.* v. *Watt*, 741 F.2d 37, 40 (4th Cir. 1984), cert. dismissed, 469 U.S. 1198 (1985); *Drummond Coal Co.* v. *Watt*, 735 F.2d 469, 472-476 (11th Cir. 1984). Section 526(a)(1) also directs that review of state SMCRA programs shall be in the judicial district "which includes the capital of the State whose program is at issue," and that review of any other rule-

making action shall be in the district "in which the surface coal mining operation is located." 30 U.S.C. 1276(a)(1); see Pet. App. 18a.

Thus, except where regulations of nationwide or statewide scope are concerned, Congress has by law expressed a preference for local judicial review under SMCRA. Pet. App. 16a. Petitioner's attempt to find in Section 520(c)(1) an authorization for "nationwide pattern and practice lawsuits" (Pet. 9), unfettered by the need to address any "site-specific facts" concerning a particular surface mining operation, has no basis in the language or structure of SMCRA. Indeed, the fact that Congress specifically provided only for certain suits challenging rules of nationwide effect to be brought in the District of Columbia reinforces the court of appeals' conclusion that the Act requires all enforcement-related suits to be brought in the district in which the complained-of mine is located.

2. Petitioner errs in asserting (Pet. 9-13) that the decision below conflicts with decisions involving other environmental statutes. The citizen suit provisions of the Clean Air Act and the Federal Water Pollution Control Act (Clean Water Act) are, as petitioner notes (Pet. 12), "virtually identical" in certain respects to the citizen suit provisions of SMCRA. Compare 30 U.S.C. 1270(a)(1) and (2) (SMCRA), with 42 U.S.C. 7604(a)(1) and (2) (Clean Air Act) and 33 U.S.C. 1365(a)(1) and (2) (Clean Water Act). Each statute authorizes, in parallel "(a)(1)" sections, actions against persons alleged to be in violation of the relevant Act and, in parallel "(a)(2)" sections, suits against the relevant Secretary or Administrator for failure to perform nondiscretionary acts. See Pet. App. 10a-12a.

With respect to forum selection provisions, however, SMCRA differs significantly from the other statutes. See Pet. App. 12a ("at this juncture, the provisions diverge"). Both the Clean Water Act and the Clean Air Act "contain '(c)(1)' forum prescriptions specifically linked to unlawful operations or activities, *i.e.*, to '(a)(1)' suits." *Ibid.* Section 505(c)(1) of the Clean Water Act specifies the forum requirements for actions "respecting a violation *by a discharge source* of an effluent standard or limitation." 33 U.S.C. 1365(c)(1) (emphasis added). Similarly, Section 304(c)(1) of the Clean Air Act addresses actions "respecting a violation *by a stationary source* of an emission standard or limitation." 42 U.S.C. 7604 (c)(1) (emphasis added). Because these forum selection provisions by their terms do not include suits against the Secretary or Administrator, courts have held them inapplicable to "(a)(2)" suits. See, *e.g.*, *Citizens for a Better Env't* v. *Costle*, 515 F. Supp. 264, 277 (N.D. Ill. 1981) (Clean Air Act); *Township of Long Beach* v. *City of New York*, 445 F. Supp. 1203, 1207-1208 (D.N.J. 1978) (Clean Water Act).

Section 520(c)(1) of SMCRA, by contrast, contains no such qualification: "Any action respecting a violation of this chapter or the regulations thereunder may be brought only in the judicial district in which the surface coal mining operation complained of is located." 30 U.S.C. 1270(c)(1); see Pet. App. 13a-14a (contrasting "generality" of SMCRA's language with "particularity" of language in Clean Air Act and Clean Water Act). Because the forum provision of SMCRA is significantly different from the forum provisions of the Clean Air Act and Clean Water Act, petitioner's prediction (Pet. 15-16) that the court's

decision will lead to the elimination of "nationwide" suits under other environmental statutes is unfounded.

Petitioner attempts to draw a distinction between violations of SMCRA and violations of other environmental laws. See Pet. 15-16 n.10. While it is true that "SMCRA involves many differing kinds of violations" (Pet. 16 n.10), they are all grounded in actions by mine operators and the Secretary's response thereto. See, *e.g.*, *Oklahoma Wildlife Fed'n* v. *Hodel*, 642 F. Supp. 569, 571-572 (N.D. Okla. 1986). Congress could easily have limited the forum provision of SMCRA in the same way as it did in the Clean Air Act ("by a stationary source") and the Clean Water Act ("by a discharge source"). The fact that Congress provided different forum provisions in other environmental statutes shows that it knows how to allow non-site-specific suits when it wants to; Congress simply did not see fit to do so in SMCRA. Cf. *Lujan* v. *National Wildlife Fed'n*, 110 S. Ct. 3177, 3191 (1990) (case-by-case approach "is the traditional, and remains the normal, mode of operation of the courts * * * [e]xcept where Congress explicitly provides for [judicial] correction of the administrative process at a higher level of generality"). By not limiting site-specific litigation to "(a)(1)" suits, Congress has directed litigants to file (and courts to entertain) *all* SMCRA citizen suits "only in the judicial district in which the surface coal mining operation complained of is located."

3. Petitioner repeatedly complains (see, *e.g.*, Pet. 18) that the court's decision will require it to file many lawsuits instead of just one. This argument is properly addressed to Congress, not to the courts. As this Court aptly observed in an analogous case:

> [Petitioner] alleges that violation of the law is rampant within this program * * *. Perhaps so. But [petitioner] cannot seek *wholesale* improvement of this program by court decree, rather than in the offices of the Department or the halls of Congress, where programmatic improvements are normally made.

Lujan v. *National Wildlife Fed'n*, 110 S. Ct. 3177, 3190 (1990).

Petitioner mistakenly claims (Pet. 14-16) that the court's decision will overburden the federal court system. The decision below, by the court's own analysis, has no applicability beyond Section 520(c)(1) of SMCRA. See Pet. App. 12a-14a. And Congress, not the court of appeals, determined that claims under SMCRA must be site-specific. Such actions will not, as petitioner contends, lead to "identical lawsuits that could (and should) be resolved in a single action." Pet. 14. Rather, citizen suits will address particular violations and federal enforcement and abatement activities with respect to specific mines, which necessarily involve different facts, statutory and regulatory provisions, and requested relief. See Pet. App. 16a.

Site-specific litigation makes particular sense in the SMCRA context, because each surface coal mine is unique. See 30 U.S.C. 1201(f). As the court of appeals pointed out, "[t]o have substance, [a claim] must rest on proof that mine operators, at specific locations, are evading the terms of the Act, and are thus 'adversely affect[ing]' the interests of the complaining persons." Pet. App. 16a; see *National Wildlife Fed'n* v. *Hodel*, 661 F. Supp. 473, 476 (E.D. Ky. 1987) ("plaintiffs are required to identify particular sites or operations in this district where [the Secretary has] failed to inspect or enforce

[SMCRA]"). Indeed, as the court of appeals explained, there are "compelling reasons" for bringing citizen suits in those districts where the relevant surface mining operations are located. Pet. App. 20a. The statutory forum requirement allows mine operators, environmental groups, and citizens affected by the action to become more readily involved in the litigation, allows for consideration of site- and region-specific factors, and more evenly distributes the work load of the federal courts. *Ibid.*

This conclusion is in accord with general principles of federal court jurisdiction. Courts sit to resolve disputes, not to make rules governing the nationwide enforcement of statutes or to provide ongoing supervision of the Executive's enforcement of the laws across the board. Pet. App. 20a; see *Heckler* v. *Chaney*, 470 U.S. 821 (1985); *Women's Equity Action League* v. *Cavazos*, 906 F.2d 742, 749 (D.C. Cir. 1990). While Congress may provide otherwise, it has not done so here, and except where expressly provided for by Congress such sweeping challenges are disfavored. See *Lujan* v. *National Wildlife Fed'n*, 110 S. Ct. at 3191. While certain economies may be achieved by nationwide litigation, Congress evidently decided that the virtues of site-specific litigation prevailed in the SMCRA context. The court of appeals' decision merely gives effect to that legislative determination.[2]

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[2] Petitioner errs in relying (Pet. 17) on the fact that Congress has appropriated funds to implement the consent order in this case. As the court of appeals correctly observed, "there is no indication that [the appropriations measures] stand for anything more than Congress' readiness to enable the Secretary to comply with court orders and perhaps the legislature's approval of [the terms of the settlement]. *Cf. Randall* v.

In any event, petitioner overstates the effect of the decision below when it claims that it "dooms the chances that SMCRA will be enforced." Pet. 17. Nothing in the court's opinion precludes petitioner—or any other plaintiff—from bringing a lawsuit to compel the Secretary to enforce the Act. The action simply must be brought in the district in which the complained-of mine is located, as the statute provides. The court of appeals expressly recognized that alternative when it ordered dismissal of this action "without prejudice to further proceedings elsewhere." Pet. App. 22a.[3]

In sum, the "environmental welfare of this country" (Pet. 17) is without question an important concern, one Congress has addressed in SMCRA and other environmental laws. Parties such as petitioner seeking to compel enforcement of those laws, however, must follow the procedures Congress provided. See *Botany Worsted Mills* v. *United States*, 278 U.S. 282, 289 (1929) ("When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode."). Section 520(c)(1) by its plain terms requires citizen suits to be brought in the judicial district in which the complained-of mine is located. Petitioner failed to do so here, and the court of appeals properly ordered the case dismissed.

Loftsgaarden, 478 U.S. 647, 661 (1986) (repeal of legislative prescription, in whole or in part, 'by implication' is not favored)." Pet. App. 16a-17a; see also *TVA* v. *Hill*, 437 U.S. 153, 189-191 (1978).

[3] Petitioner's argument that "the expenditure of time and resources to this point may prove fruitless" (Pet. 14) is misplaced. Having brought the litigation in the wrong forum, petitioner can hardly complain that its efforts may come to naught.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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